IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1118 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SUO MOTU FOR B K DUDANI

Versus

STATE OF GUJARAT

Appearance:

SUO MOTU for Petitioner

SAMIR DAVE, AGP, for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision:8/03/2001

ORAL JUDGEMENT

Affidavit-in-reply has been submitted by the Deputy Director, Pension and Provident Fund, which is taken on record. Affidavit-in-reply is also filed by the State Government which is also taken on record. Shri

B.K. Dudani, Deputy Conservator of Forests, who was retired, sent a letter to this Court which was treated as a suo motu petition and the Rule was issued to the respondents on 7.2.2001 making it returnable on 8.3.2001. The respondents were directed to file affidavit-in-reply to the Special Civil Application and accordingly they filed the affidavit-in-reply.

2 It is the grievance of the petitioner that his retiral benefits were given to him after a considerable delay. In the reply affidavit the State of Gujarat has admitted that there is a delay in making the payment of the retiral benefits to this person and for this delayed payment of retiral benefits interest has not been paid. However, after issuance of notice by this Court an order has been passed under which it is sanctioned that the petitioner is entitled for Rs.42,616 towards interest on the gratuity amount. For the period from 31.7.1991 to 30.11.1994 the interest was awarded on the gratuity amount at the rate of 10% and for the period from 1.12.1994 to 18.12.2000 the interest was awarded at the rate of 12%. From the reply of both the respondents, I do not find that this amount of Rs.42,616 has been paid to Mr Dudani, but only sanction has been made. The Under Secretary, Government of Gujarat, Forest and Environment Department, Gandhinagar, in para 2 of the affidavit submitted that in view of the sanction of the interest on the delayed payment of gratuity amount to Mr Dudani, this petition does not survive and accordingly notice may be discharged. Merely because of the order passed by the State Government approving to pay the interest on the delayed payment of retiral benefits i.e. gratuity to the petitioner, this petition does not become infructuous. Three questions remain to be decided by the Court. Firstly, whether the interest awarded at the rate of 10% for the period from 31.7.1991 to 30.11.1994 and for the rest of the period i.e. for the period from 1.12.1994 to 18.12.2000 at the rate of 12% is justified and if it is not justified, at what rate interest should be paid to this person. The second question is that this amount of interest is to be paid by the State of Gujarat which is an impersonal machinery not because of its own fault but because of reckless and negligence and carelessness on the part of its officers what action is to be suggested. The third question is up to what date the interest is required to be awarded to the petitioner.

3 The Deputy Director of Pension and Provident Fund, Ahmedabad, along with his reply submitted a copy of the Government Circular dated 18.11.1981 of the Finance Department, Government of Gujarat, Gandhinagar. This

Circular reads as under:-

CIRCULAR

"Under G.R.F.D. No.NVN-1079-2091-P, dated 14.8.79, Government have issued orders for allowing interest on delayed paymetns of Death-cum-Retirement Gratuity. It has been represented that the copy of the orders, when the payment of interest on delayed payment is allowed under G.R.F.D. dt. 14.8.79, are being endorsed to the Office of Accountant General, Ahmedabad for the authorisation of the amount of interest. It has been provided clearly in the G.R.F.D. dt. 14.8.79, that the payment of interest should be authorised by the Administrative Department in consultation with the concerned Financial Adviser. In view of these provisions of G.R.F.D. dated 14.8.79, and in consultation with A.G. Govt. is pleased to clarify that no authorisation from the A.G. will be necessary for payment of interest on the basis of the orders of competent authority.

All the Administrative Departments are requested to follow these orders of F.D. dt. 14.8.79 scrupulously."

It is borne out from the circular that the interest is payable on the delayed payment of Death-cum-Retirement Gratuity but payment thereof should be authorised by Administrative Department in consultation with the Financial Adviser. In this case, the Administrative Department has sanctioned the payment of interest on 22.2.2001 and at the rate of 10% and 12% as stated earlier. It is an internal matter of the Department for which the retired officer of the Government is not concerned with. When there is a delay in making the payment of amount of Death-cum-Retirement Gratuity, it is to be taken suo motu notice by the concerned officer and the matter should have been decided immediately. The delay is there in making the payment of Death-cum-Retirement Gratuity which is admitted by the respondents. This person retired from the service on 31.7.1991 but this amount of gratuity was paid after a considerable delay. I fail to see any justification in awarding of the interest to the officer at the rate of 10% for some period and at the rate of 12% for the rest of the period. In case reported in 2000 AIR SCW 2678 the Supreme Court has held that where amount of retirement benefits has been withheld by the employer without there

being any fault on the part of the employee, the employee is entitled for the interest on the delayed payment of retiral benefits. In that case the interest was awarded at the rate of 18% per annum on the delayed payment of retiral benefits. The learned counsel for the respondent contended that as per the Government Circulars of the Finance Department a maximum of 12% per annum of interest is payable. This is not binding on the Court and what is binding on the Court is Supreme Court decision. This is a fit case where the interest to be awarded at 18% per annum. Shri Budani is entitled for the interest for the delayed payment of death-cum-retirement gratuity at the rate of 18% per annum.

4 The second question is whether the public exchequer should be burdened of this financial liability or this amount shall be recovered from those officers who are responsible for this delayed payment of death-cum-retirement gratuity. The State of Gujarat is an impersonal machinery and it is not at fault for this delayed payment of the amount of death-cum-retirement gratuity to this retired officer. Its fault only is that it has no control over its officers who are negligent, careless, reckless and wholly unmindful of the duties towards public. If any financial burden is to be suffered by the State of Gujarat because of negligence, carelessness and recklessness and unmindfulness of their duties towards public of its officers, they are responsibel to make good of this loss. It is the people money and it cannot be permitted to be squandered in this manner and fashion by the officers of the State of Gujarat. It is unfortunate that officers and employees of the State Government all the time make demands for revision of pay-scales, dearness allowance, perks, etc. but they do not care about their duty and work. The only thing that has been learnt by them is that of their rights and not of their duties which they owe to the public. It is a clear case becaause of negligence, recklessness and carelessness of the officers long time is taken for the payment of death-cum-retirement gratuity to the petitioner. Why for this negligence, carelessness and recklessness on the part of the officers of the State Government, the public exchequer has to be burdened. Though the State Government is to make the payment of amount of interest at the rate of 18% per annum on the delayed payment of death-cum-retirement gratuity to the petitioner, the Chief Secretary is directed to hold an enquiry into the matter and whosever is found responsible for this delayed payment of death-cum-retirement gratuity to the petitioner this amount should be recovered from

them and this exercise is to be completed within a period of six months from the date of receipt of writ of this order.

5 The petitioner is entitled for the interest for this delayed payment of death-cum-retirement gratuity at the rate of 18% from the date of retirement till the date on which the amount has been paid to him.

6 In the result, this petition succeeds and the same is allowed. The respondents are directed to pay the interest at the rate of 18% to the petitioner for the delayed payment of death-cum-retirement gratuity from the date of retirement till the date on which the amount has been paid. This calculation of the interest has to be made within one month from today and the payment shall be made within seven days thereafter. The compliance report of this order is to be submitted to this Court. Rule is made absolute accordingly. A copy of this order be sent to the concerned officer forthwith.

7 Before parting with this judgement, I am constrained to say something for the approach the officer who filed affidavit-in-reply. The approach of the Under Secretary to Government of Gujarat, Forest and Environment Department, is wholly perverse and not befitting to the post which he is holding. Merely because of the order passed by the State Government approving to pay the interest on the delayed payment of retiral benefits of gratuity to the petitioner, this petition does not become infructuous.

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